

TO: Zoning Board of Adjustment
FROM: Community Development Department
DATE: February 10, 2016

RE: CASE #CU-16-002
REQUEST: A conditional use permit to allow day care services in an R-2/Two Family and R-3/Low Density Multi-Family Residential District.

APPLICABLE

CODE SECTIONS: §15.09.030 Conditional Uses. The following conditional uses shall be permitted in an R-2 District, in accordance with the requirements set forth in Chapter 15.27:

02. Day care services

and

§15.10.030 Conditional Uses. The following conditional uses shall be permitted in an R-3 District, in accordance with the requirements set forth in Chapter 15.27:

06. Day care services

LOCATION: 3521 – 11th Avenue

LEGAL

DESCRIPTION: Lots 5 through 7, Block 34, Brown's Subdivision

APPLICANT: Goldie Nielsen, 157 Corrine Avenue, Council Bluffs, IA 51503

REPRESENTED BY: Chad R. Taylor, 1326 North Broadway, Council Bluffs, IA 51503

BACKGROUND – The subject property at 3521 – 11th Avenue has operated as a day care facility since it was built in 1968. The owner, Goldie Nielsen, is in the process of selling the property and it was discovered that a conditional use permit has never been approved for this location. A 'day care center', 'nursery school' or 'day nursery' did not appear as a defined use in the Zoning Ordinance of the Municipal code until 1972. Based on this information, it is the determination of the Community Development Department that the use as a 'day care facility' is a legal nonconforming use of the property. A legal nonconforming use may continue in accordance with the limitations of Section 15.26.030 of the Municipal Code.

However, Section 15.26.030(2) states "Abandonment of Nonconforming Use: If any nonconforming use ceases for a continuous period of more than six months, any subsequent use shall conform to the regulations of this title." Because the day care facility has not operated for a period of more than six months, the applicant was advised that a conditional use permit must be granted before the facility can re-open.

CURRENT ZONING AND LAND USE – Land use surrounding the subject property consists of single family residential structures to the north, east and west. Single family, a duplex and multi-family structures lie to the south of the property.

CITY DEPARTMENTS AND UTILITIES – No adverse comments have been received from any City department or utility. The Fire Marshall has indicated that the applicant will need to get the fire alarm system back into compliance.

The Community Development Department has received no complaints regarding the subject property.

NEIGHBORHOOD RESPONSE – All property owners within 200 feet of the day care were notified of the request. One property owner, Mary Cummings at 3529 – 11th Avenue, requested additional information.

Douglas Gray, owner of 3528 – 11th Avenue, is opposed to a day care facility re-opening at this location.

COMMENTS

The Zoning Board of Adjustment shall make findings of fact, based upon the evidence presented at the public hearing, with respect to each of the applicable standards in Section 15.02.090.E (Findings of Fact).

The Zoning Board of Adjustment may impose such conditions and restrictions upon the location, construction, design and use of the property benefited by a conditional use as may be necessary or appropriate to protect the public interest, adjacent property and property values. Failure to maintain such conditions or restrictions as may be imposed shall constitute grounds for revocation of the conditional use. The terms of relief granted, including any conditions or restrictions, shall be specifically set forth in the concluding statement separate from the findings of fact. No conditional use shall be approved unless the Zoning Board of Adjustment makes findings of fact based directly on the standards and conditions imposed by this section. The findings of fact are presented below *in italics*:

- 1. The proposed conditional use will comply with all applicable regulations of this Ordinance, including lot requirements, bulk regulations, use limitations and all other standards or conditions contained in the provisions authorizing such use.** The size of the property is adequate for the operation of a day care facility.
- 2. Adequate utility, drainage and other necessary facilities or improvements have been or will be provided.** The subject property is an existing day care facility. No utility service extensions and/or infrastructure upgrades are necessary for a daycare service to operate at this location.
- 3. Adequate access roads or entrance and exit drives will be designed and built to prevent traffic hazards and to minimize traffic conflicts and congestion in public streets and alleys.** The day care facility is located on an improved residential street. No additional improvements are necessary for the proposed request.
- 4. All necessary permits and licenses required for the operation of the conditional use have been obtained, or it clearly appears that such permits are obtainable for the proposed conditional use on the subject property** The future owner/operator of the day care facility will need to be registered by the State of Iowa and will need to comply with all applicable City, State and Federal regulations.
- 5. All exterior lighting shall be shaded as necessary to direct the light away from neighboring residential properties.** The facility is currently vacant. The future owner/operator will need to comply with all applicable regulations.
- 6. The location and size of the conditional use, the nature and intensity of the activities to be conducted in connection with it, the size of the site, and the relationship of the site to adjacent roadways shall be considered to assure the use is in harmony with the appropriate and orderly development of the district and the neighborhood in which it is located.** The structure is an existing day care facility in a residential neighborhood. A day care facility will not have a negative impact on the development of the neighborhood.


7. The location, nature and height of buildings, structures, walls and fences on the site, and the nature and extent of landscaping and screening on the site shall be designed so that the use will not reasonably hinder or discourage the appropriate development, use and enjoyment of the adjacent land, buildings and structures. No new outdoor construction, landscaping or screening is proposed at this time.

8. The proposed conditional use will not cause substantial injury to the value of other property in the neighborhood in which it is located and will contribute to and promote the convenience and welfare of the public. The day care facility has operated at this location since 1968. If operated properly, it should not impact the current valuation of the surrounding properties.

RECOMMENDATION

The Community Development Department recommends approval of a conditional use permit to allow day care services in an R-1/Single Family Residential District at 202 Happy Hollow Circle, subject to the following conditions:

1. The day care shall be registered through the State of Iowa and shall comply with all applicable City, State and Federal regulations.
2. The existing off-street parking area shall be moved back behind the front yard setback line and hard surfaced with asphalt or concrete as per City Standards. The existing gravel surface is not acceptable.
3. All sidewalks, driveways and parking areas shall be hard surfaced, properly maintained and kept free of obstructions at all times.
4. The hours of operations shall be limited to 6:00 a.m. to 7:00 p.m., Monday through Friday.
5. The number of children and employees shall be determined by the regulation of the State of Iowa Department of Human Services.
6. The outdoor play area shall be restricted to within the boundary of the applicant's property.
7. Any proposed signage will need to be reviewed and approved by the Community Development Department.



Rose Brown
Planning Coordinator



Rebecca Sall
Assistant Planner

RLB/RLS





Off-street parking area



3521 – 11th Avenue

